

STATE OF WISCONSIN

PERSONNEL COMMISSION

LARRY DRIGOT,
Appellant,

v.

**Secretary, DEPARTMENT OF
TRANSPORTATION and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondents.

FINAL DECISION AND
ORDER

Case No. 00-0099-PC

This is an appeal of DOT's decision to deny the appellant's (Mr. Drigot's) request for reclassification of his position from Engineering Technician-Transportation 3 (ETT 3) to ETT 4. This case does not involve a dispute as to the interpretation of the ETT class specification; rather it comes down to a factual question of what are the appellant's actual duties and responsibilities. This question is resolved by the testimony and documents that constitute the record of this case.

The ETT class specification includes the following for typical duties for the ETT 4 classification:

These positions assist the construction project manager of the design squad leader, occasionally function as the project leader for small construction projects or function as a design squad leader, occasionally function as the project leader, or complete technical tasks in highway design and construction. Specific construction duties include: Direct foreman and superintendents of contractors and subcontractors on the larger highway construction projects, interpret specifications and plans to see that intent is followed in all phases of work-grading, culverts, granular sub-base, fencing, erosion control, direct and train inspectors; direct staking crews as construction survey crew chief; assist project supervisor in keeping records, reports, diaries, final pay quantity records and inspection reports; coordinate utility work to coincide with grading operations; interpret plans to obtain necessary control, alignment and cross section data; organize staking crew and instruct and train assigned personnel, inspect commercial asphaltic and concrete plant sites, fabrication shops, or manufacturers on materials used in bridge and

highway construction projects throughout the district or the state; inspects painting of structural steel for bridges; inspects the manufacturing and fabrication of concrete and metal pipe for culvert and sewer construction operations; provide field testing and maintain records for all materials incorporated into a construction project. Specific design duties include: Assist in preparation and completion of highway design plans and specifications; develop plans and other contract documents for intersections, roadway geometrics, and other design features; compute estimated construction quantities; instruct and direct other technicians; compute estimated plot information from field surveys for use in plan development of a design project; assist drafting personnel with the layout and drafting of details, plan sheets, and plats. Respondents' Exhibit R12, p. 4.

The ETT 3 class specification includes the following as typical duties:

These positions perform a variety of duties including inspection, survey-related work and the sampling and testing of materials. Specific duties in inspection include: Inspect culvert pipe and sewer installations; inspect pile driving and record data; inspect grading operations; inspect the placement of sub-base and base courses; complete sieve analysis for aggregate conditions; complete air and slump tests of concrete; inspect concrete or asphalt paving equipment; check proper alignment and grade; check proper placement of reinforcement and joints; interpret plans and specifications; keep paving diary. Specific survey-related duties as construction survey crew chief for a medium to large project are: Direct and train survey crew personnel; operate and maintain equipment; establish horizontal and vertical alignments for controlling earth work, sewer, base course structures and pavement; makes measurements and computations. In assisting the construction project engineer, this position maintains records and reports and coordinates inspection and survey activities. These positions may also coordinate the sampling and testing of materials incorporated into the more complex construction project or projects. Employee may direct the work of other technicians, aids or temporary employees. Respondent's Exhibit R 12, p. 9.

Appellant's most recent (February 10, 1998) position description (PD) (Respondents' Exhibit R2) includes the following goal and worker activities:

55% A. Inspection of structures, paving, grading, and roadway drainage

A1. Interprets specifications and plans to see that intent is followed in all phases of work.

A2. Reviews construction activities with contractor

- A3. Measures, computes and documents contract pay quantities.
- A4. Documents contractor activities and prepares project reports.
- A5. Assures quality of construction materials.

The other goals are “35% B. Assists Project Manager/Construction Leader in overall projects group activities;” “5% C. Assists in project surveys;” and “5% D. Maintain and upgrade technical knowledge, skills and teamwork methods.”

Appellant’s duties and responsibilities are as described in his PD. The majority of his work falls into the general areas of inspection and inspection-related activities. As such, this work is within the typical duties found in the class specification for ETT 3. Appellant’s case relies on the assertion that his duties and responsibilities are not accurately described in his 1998 PD (Respondent’s R2), and include duties (primarily involving survey work) that fit within the typical duties of the ETT4 classification. Respondent DOT disagrees and based the denial of the reclassification request primarily on the conclusion that complainant’s duties remain primarily inspection and inspection-related activities.

Appellant has the burden of proof and must establish by a preponderance of the evidence the facts necessary to show that respondent’s denial of his reclassification request was in error. *See, e. g., Jackson v State Personnel Board, Dane County Circuit Court, #164-086, 2/26/79.* Essentially the only evidence appellant presented at his hearing was his own testimony. On the other hand, there was contrary testimony from respondent’s witnesses. Barb Olayczyk, a senior level engineer, testified that the majority of appellant’s work, including work appellant claimed was primarily at the ETT4 level, involved inspections. She also testified that his inspection-related work constituted about 75-80% of his overall activities, and that he did very little either survey work or work as an acting construction leader. Chris Blazek, a project engineer, testified that about 70-75% of appellant’s work involved inspection and inspection-related activities. He further testified that appellant functioned as a construction leader only when both he and Olayczyk were gone, and this amounted to

less than 5% of appellant's activities. He also said that when appellant did function as the acting construction leader, he did not perform the full range of those duties, but because of the temporary nature of this work, appellant left decisions for the supervisor to make upon the supervisor's return to work. There can be little question but that appellant has not satisfied his burden of proof.

ORDER

This appeal is dismissed.

Dated: March 21, 2001

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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JUDY M. ROGERS, Commissioner

Parties:

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL
REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95